LAW OF WAR (LOW) TRAINING

Specialized Training Prepared by:

Judge Advocate Division
International & Operational
Law Branch (JAO)

TRAINING OBJECTIVES

- **Impart "specialized" LOW knowledge to those whose billet or duties require:**
  - **Command of troops in combat**
  - **Planning for combat operations**
  - **Direction of prisoner of war (POW) handling**
  - **Investigation of alleged war crimes**
  - **Direction of civil affairs operations in foreign populace**
- **"Specialized" training is provided on an "as necessary" basis and topics discussed are tailored toward the intended audience**

LOW REFERENCES

- **Hague Convention IV of 1907**
- **Geneva Conventions of 1949**
- **DoDD 2311.01E (DoD LOW Program)**
- **SECNAVINST 3301.1C (DoN LOW Program)**
- **MCO 3300.4A (Marine Corps LOW Program)**
- **DoD LOW Working Group**

LOW DEFINED

- **That part of international law that regulates the conduct of armed hostilities**
- **It is often called the “Law of Armed Conflict” or “LOAC”**
- **Encompasses all international law for the conduct of hostilities binding on the United States and its Individual Citizens**
- **Includes treaties and international agreements to which the United States is a party, and applicable customary international law**

Source: DoD Directive 2311.01E, DoD Law of War Program, May 9, 2006

PURPOSE OF THE LOW

- **The LOW is comprised of those basic legal standards of battlefield behavior that:**
  - **Assists commanders and Marines in ensuring the disciplined, lawful, and efficient application of military force IOT accomplish the mission**
  - **Ensures humane treatment for persons who fall into the hands of the enemy, particularly prisoners of war; military wounded, sick, and shipwrecked; and civilians**
  - **Protects innocent civilians from unnecessary suffering and limits damage to civilian property**
  - **Encourages the enemy to surrender**
  - **Facilitates the restoration the peace**
  - **Preserves the professionalism, honor, and humanity of Marines**
  - **Maintains domestic and international support for military operations**

CORE PRINCIPLES OF LOW

CORE PRINCIPLES OF LOW

- **Military Necessity**
- **Unnecessary Suffering**
- **Discrimination/Distinction**
- **Proportionality**

MILITARY NECESSITY

"That principle which justifies those measures
not forbidden by international law which are
indispensable for securing the complete
submission of the enemy as soon as possible."

(ARMY Field Manual 27-10 Law of Land Warfare)

MILITARY NECESSITY

- **Military necessity does not authorize acts otherwise prohibited by the LOW**
- **Military necessity is not a defense for acts expressly prohibited by law**
- **Military necessity is a legal justification for attacks on legitimate military objectives that could result in harm to civilians and civilian objects**

DISTINCTION

- **Each party may only direct the operations of their armed forces against military objectives**
- **Provides civilians immunity from direct attack for so long as they take no part in hostile acts against enemy military forces**
- **Objects used concurrently for civilian and military purposes are liable to attack if there is a clear military advantage to be gained from their seizure or destruction**
- **Intermingling or concurrent use is a factor a military commander and his or her staff must consider in the planning and execution of military operations through the law of war concept of proportionality**

DISTINCTION

- **Obligates each party to a conflict,**
  - **in their use of force and in their conduct of military operations,**
  - **to take reasonable measures to distinguish between combatants and military objectives on the one hand, civilians and civilian objects on the other,**
  - **in order to minimize injury to individual civilians and the civilian population as such, and to limit damage to civilian objects**

PROPORTIONALITY

The expected incidental death or injury to civilians or damage to civilian property must not *"be excessive in relation to the concrete and direct military advantage expected to be gained."*

(FM 27-10, paragraph 41 (Change 1))

PROPORTIONALITY IN TARGETING

- **Weighing anticipated gains of targeted attack against foreseeable damage consequences for civilian population**
- **Balance of military necessity and unnecessary suffering**
- **Civilians taking a direct part in hostilities are excluded from proportionality targeting calculation**

PROPORTIONALITY IN TARGETING

- **When civilians and civilian objects are not intermingled with military objectives, proportionality does not limit:**
  - **The use of overwhelming firepower on opposing enemy forces in the open to subdue or destroy**
  - **The degree of damage that can be inflicted on purely military targets**
- **When there is intermingling, proportionality recognizes the reality that in war there may be incidental injuries to civilians and civilian objects during lawful military operations**

UNNECESSARY SUFFERING

- **Prohibits the infliction of gratuitous violence on the enemy**
- **Prohibits use of arms calculated to cause unnecessary suffering – examines the weapon design itself**
- **Prohibits use of otherwise lawful arms in a manner that causes unnecessary suffering - examines the way weapon is used**
- **Test: Whether the injury (including death) to combatants is manifestly disproportionate to weapon's intended use and the military advantage expected to be gained from its use**

LEGAL BASIS FOR USE OF FORCE

MODERN *JUS AD BELLUM*

- **Law governing States resort to force**
- **United Nations Charter**
  - **Member States must resolve international disputes peacefully (Article 2(3))**
  - **Member States must refrain from the threat or use of force against the territorial integrity or political independence of any State (Article 2(4))**
- **Exceptions to Article 2(4)**
  - **Actions authorized by the UN Security Council under Chapter VII of UN Charter**
  - **Actions that constitute a legitimate act of individual or collective self-defense pursuant to Article 51**

MODERN *JUS AD BELLUM*

- **Enforcement action by UN Security Council under Chapter VII**
  - **Security Council has primary responsibility to maintain international peace and security**
  - **First must determine the existence of a threat to the peace, breach of the peace, or an action of aggression**
  - **3 Courses of Action**
    - **Make Recommendations**
    - **Mandate non-military measures (e.g., diplomatic and economic sanctions)**
    - **Mandate military enforcement measures**

MODERN *JUS AD BELLUM*

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

(UN Charter, Article 51)

MODERN *JUS AD BELLUM*

- **Self-Defense pursuant to Article 51 of UN Charter**
  - **Individual**
    - **Protection of Territorial Integrity**
    - **Protection of Political Independence**
    - **Protection of Nationals**
  - **Collective;**
    - **Assistance must be requested by victim State**
    - **Collective Defense Treaties; Bilateral Military Assistance Agreements**
      - **North Atlantic Treaty Organization (NATO)**
      - **Inter-American Treaty of Reciprocal Assistance (Rio treaty)**
      - **Security Treaty Between Australia, New Zealand, and the United States (ANZUS)**

MODERN *JUS AD BELLUM*

- **Historical Origins of Anticipatory Self-Defense**
  - **1837 “Caroline Case”**
  - **State need not suffer an actual armed attack before taking defensive action**
  - **May engage in anticipatory self-defense if the circumstances leading to the use of force are “instantaneous, overwhelming, and leaving no choice of means and no moment of deliberation”**

MODERN *JUS AD BELLUM*

- **Customary International Law and the Principle of Anticipatory Self-Defense**
  - **Lack of International Consensus**
  - **Using force in anticipation of an imminent armed attack when:**
    - **Evidence shows an aggressor has committed itself to armed attack; and**
    - **Delaying a response would hinder defender's ability to mount a meaningful defense**
  - **Preventative Self-Defense—employed to counter non-imminent threats—is illegal under LOW**
- **Self-Defense Against Non-State Actors (i.e., International Terrorism)**

U.S. DOMESTIC LAW AND USE OF FORCE

- **Use of Force requires: (1) an international legal basis and (2) domestic legal support**
- **U.S. Constitution**
  - **Congress: declare war, raise and support armies, provide and maintain navy, and make all laws necessary and proper for carrying out those responsibilities**
  - **President: Commander-in-Chief of the Armed Forces**
- **1973 War Powers Resolution, 50 USC §§1541-1548**
  - **Report to Congress within 48 hours of introduction of troops**
  - **60 day clock for Congress to authorize continued troop presence**

LOW APPLICATION

WHEN LOW APPLIES

- **Common Article 2, Geneva Conventions:**
  - **All cases of declared war or any other armed conflict arising between two or more States, even if state of war is not recognized by one of them**
  - **International armed conflict (IAC)**
  - **Full protections of Geneva Conventions apply**
- **Common Article 3, Geneva Conventions:**
  - **Armed conflict not of an international character, which includes:**
    - **Internal armed conflicts, or non-international armed conflicts (NIACs)**
    - **Hamdan: Armed conflicts between one or more States and transnational armed groups (e.g., al Qaeda)**
  - **Only Common Article 3 of the Geneva Conventions apply**
  - **Other principles of LOW still apply (e.g., discrimination, unnecessary suffering)**

LOW APPLICATION

- **DoD policy is that Members of the DoD Components comply with the LOW during all armed conflicts, however such conflicts are characterized, and in all other military operations.**
- **LOW obligations of the United States are observed and enforced by the DoD Components and DoD contractors assigned to or accompanying deployed armed forces**

(Source: DoD Directive 2311.01E, DoD Law of War Program, May 9, 2006)

OBLIGATIONS OF THE LOW

- **All Parties to the Geneva Conventions ✉ respect and to ensure respect for the Conventions in all circumstances; ensure armed forces and others acting on their behalf comply with the LOW**
- **United States ✉ U.S. treaty obligations**
  - **Enact laws to ensure effective punishment of those committing grave breaches of the Geneva Conventions**
  - **Search for and either prosecute or extradite those who have committed grave breaches of the Geneva Conventions**
  - **Take measures necessary for the suppression of violations of the LOW that do not amount to grave breaches**
  - **Provide accused persons the safeguards of a proper trial and defense**

ENFORCEMENT OF THE LOW

- **United States Enforcement**
  - **UCMJ**
  - **Military Extraterritorial Jurisdiction Act (MEJA) of 2000**
  - **War Crimes Act of 1996**
  - **Torture Statute**
  - **Military Commissions**

ENFORCEMENT OF THE LOW

- **International Enforcement**
  - **Geneva Conventions of 1949 ✉ each State party must prosecute persons alleged to have committed grave breaches before its own courts or extradite to a State that will**
  - **International Military Tribunal (Nuremberg Tribunals)**
  - **International Criminal Court (ICC)**
  - **Other International Tribunals**

INDIVIDUAL AND COMMAND RESPONSIBILITY

GENERAL LOW RESPONSIBILITIES

- **Each member of the armed services has an obligation to**
  - **Carry out his or her assigned duties in accordance with the LOW obligations of the United States**
  - **Take all necessary and appropriate measures to prevent violations of the LOW**
  - **Report any known, alleged or suspected violation of the LOW to appropriate authority for investigation**
  - **Refuse to comply with orders that are patently illegal, in violation of these obligations**

DON/MARINE CORPS POLICY

- **All reportable incidents shall be reported promptly, investigated thoroughly and remedied by corrective action**
- **A reportable incident is a possible, suspected, or alleged LOW violation for which there is *credible* information**
- **DoN personnel with knowledge of a reportable incident will, as soon as practical: inform the immediate commander, officer senior to commander; and/or inspector general, judge advocate, or military police investigator**

DON/MARINE CORPS POLICY

- **Initial Report ✉A commander who obtains information about a reportable incident will:**
  - **Take immediate action to mitigate or correct the harm**
  - **Report matter promptly through command channels, to higher authority;**
  - **As soon as practical, report matter to the nearest military policy investigator; and**
  - **If practical, secure the scene of the possible LOW violation so that evidence may be preserved and collected**

DON/MARINE CORPS POLICY

- **Higher authorities receiving an initial report will:**
  - **Expeditiously report incident to the operational chain of command and Service chain of command**
  - **OPREP 3 Report (MCO 3504.2), include DC PP&O (PO/PS), IGMC, and SJA to CMC (JAO) as information addressees**
  - **Request a formal investigation by the cognizant military investigation authority**

LEGAL RESPONSIBILITY FOR BATTLEFIELD ACTIONS

- **“Rendulic Rule”**
- **Military commanders’ and military personnel's’ liability for battlefield acts should be evaluated based on information *reasonably available at the time of decision***

INDIVIDUAL RESPONSIBILITY

- **Historic practice of Services is to charge members of U.S. military under the enumerated articles of the UCMJ for offenses regarded as “war crimes”**

COMMANDER'S RESPONSIBILITY

- **Legally responsible for LOW violations committed by subordinates when:**
  - **Under UCMJ:**
    - **Commander ordered act committed**
    - **Commander has actual knowledge of the act, either before or during its commission, and did nothing to prevent or stop it**
  - **Under International Law:**
    - **Commander knew, or should have known, through reports received or other means, that subordinates were about to commit or had committed a LOW violation and failed to take necessary reasonable steps to ensure LOW compliance or punish such violations**

THE HAGUE AND GENEVA CONVENTIONS

THE HAGUE AND GENEVA TRADITIONS

- **Hague Convention No. IV of 1907, Regulations Respecting Law and Customs of War on Land**
  - **Regulates “means and methods” of warfare (e.g., tactics, weapons, and targeting decisions)**
- **Geneva Conventions of 1949**
  - **Protects “victims” of war such as wounded and sick, shipwrecked at sea, prisoners of war, and civilians**
  - **Ensures humane treatment of the “victims” it aims to “respect and protect”**

ADDITIONAL PROTOCOLS TO GENEVA CONVENTIONS OF 1949

- **Additional Protocol (AP) I of 1977: Protection of Victims of International Armed Conflict**
- **AP II of 1977: Protection of Victims of Non-international Armed Conflict**
- **Attempts to combine and supplement "Hague Law" and "Geneva Law"**
- **Without recognizing the authority of these two protocols, the United States recognizes that many of their provisions are either an accurate statement of the law or consistent with U.S. practice**

SPECIAL PROTECTIONS UNDER THE LOW

CATEGORIES OF SPECIAL PROTECTIONS

- **Civilians**
- **Prisoners of War**
- **Wounded and Sick in Field**
- **Wounded, Sick, and Shipwrecked at Sea**
- **Medical personnel, medical units and establishments, chaplains**

CIVILIANS

- **A civilian is a person who is not a member of the armed forces of parties to conflict; militia or organized resistance belonging to parties to conflict**
- **A civilian shall not be the object of a direct or intentional attack**
- **Military commanders and personnel must take reasonable steps to separate the civilian population from military objectives**

CIVILIANS: PROTECTED PERSONS

- **Respect for Persons**
- **Respect for Honor**
- **Respect Family Rights**
- **Respect Religion**
- **Respect Customs**
- **No insults or exposure to public curiosity**
- **No rape, forced prostitution**
- **No Human Shields**
- **No physical or moral coercion**
- **No actions causing physical suffering**
- **No pillaging**
- **No collective penalties**
- **No reprisals**
- **No hostages**

DIRECT PARTICIPATION IN HOSTILITIES (DPH)

- **Civilians who take a direct part in hostilities forfeit protection from being made the object of attack.**
- **Categories of civilians who can be targeted:**
  - **Civilians while engaged in DPH**
  - **Civilians who continuously DPH are subject to attack at all times**

CIVILIAN OBJECTS

- **All civilian property that are not military objectives, i.e., those objects not used to support or sustain an enemy State's war-fighting, war-supporting, or war-sustaining capability**
- **Includes those objects that do not have the potential for instantaneous conversion to military use**
- **Civilian objects may not be made the object of intentional attack**
- **If a civilian object becomes a military objective, it ceases to be a civilian object, and may be seized or destroyed**

PRISONERS OF WAR

- **Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (GPW)**
- **POW status is important because:**
  - **Some POWs receive combatant immunity for warlike acts**
  - **POWs are entitled to all the rights, privileges, and protections under GPW**

PRISONERS OF WAR

- **POW Status depends on**
  - **Right kind of conflict**
  - **Right kind of person**
- **All Geneva Conventions, to include GPW, apply during International Armed Conflicts between State Parties to Geneva Conventions**
- **Persons entitled to POW status include members of the armed forces of a State Party to the conflict, authorized civilians accompanying its armed forces, and militia forces provided they meet specific criteria**
- **Non-International Armed Conflicts**

PRISONERS OF WAR

- **Humane Treatment**
- **No medical experimentation**
- **Protection from violence, intimidation, insults, public curiosity**
- **Equality of treatment**
- **Free maintenance and medical care**
- **Respect for person and honor**
- **No reprisals**
- **No renunciation of rights or status**
- **ICRC access**
- **Immunity for warlike acts, but not for pre-capture criminal offenses or LOW violations**

DOD DETAINEE POLICY

- **Detainee Treatment Act of 2005**
- **DoDD 2310.01E (The DoD Detainee Program)**
- **Any person captured by U.S. forces will receive the *protections* afforded POWs by the GPW until a determination is made that he or she is not entitled to such *status***
- **Detainees not entitled to treatment as POWs will receive at the very least the minimum protections contained within Common Article 3 to the Geneva Conventions of 1949**

DETAINEE HANDLING

- **Upon Capture ✉ STRESS:**
  - **Search for weapons, identification, items of intelligence value or evidence of criminal misconduct**
  - **Tag with a DD Form 2745 or field expedient tag**
  - **Report to higher the number detained and coordinate transport to detainee collection point (DCP)**
  - **Evacuate to DCP as soon as possible**
  - **Segregate by rank; order to remain silent**
  - **Safeguard: provide medical treatment if required; protect from attack or harm**

DETAINEE INTERROGATION AND QUESTIONING

- **DoDD 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning**
- **Only trained and certified interrogators may conduct interrogations**
- **Only techniques listed in Army Field Manual (FM) 2-22.3 (Human Intelligence Collector Operations) are approved interrogation techniques**
- **Tactical questioning is the only type of questioning that non-trained, non-certified personnel may conduct with a detainee**

TACTICAL QUESTIONING

The field-expedient initial questioning for information of immediate tactical value of a captured or detained person at or near the point of capture and before the individual is placed in a detention facility. Tactical questioning is generally performed by members of patrols, but can be done by any appropriately trained DoD personnel. Tactical questioning is limited to direct questioning.

(DoDD 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning)

DETAINEE EVIDENCE PACKETS

- **Capturing unit must provide evidence linking detainee to the reason for detention**
- **Administrative Paperwork**
  - **Photographs**
  - **Statements**
  - **Diagrams**
- **Evidence Handling ✉ Chain of Custody**

MEDICAL PERSONNEL, MEDICAL UNITS AND ESTABLISHMENTS; CHAPLAINS

- **Military medical personnel and chaplains are protected from intentional enemy attack, unless they commit acts harmful to the enemy that are not consistent with their authorized duties**
- **May be armed with light individual weapons for their personal defense or for the defense of their patients against criminal acts**
- **Shall be issued an identification card with distinctive emblem to denote status.**
- **If captured they are retained personnel, not prisoners of war**

MEDICAL PERSONNEL, MEDICAL UNITS, AND ESTABLISHMENTS; CHAPLAINS

- **Military medical units, fixed installations, and ground transports are entitled to respect and protection from intentional attack – use of distinctive emblem critical**
- **If used for acts inconsistent with humanitarian mission and protected status, or otherwise to engage in acts harmful to the enemy, it may lose its protected status**
- **Due warning must be provided by competent authority, and warning must have been disregarded after a reasonable time limit before protected status is lost**

MEDICAL PERSONNEL, MEDICAL UNITS, AND ESTABLISHMENTS; CHAPLAINS

- **Military medical transport clearly identified as such are entitled to respect and protection from intentional attack so long as they do not engage in acts harmful to the enemy**
- **All forms of medical transport are subject to search by opposing forces to ensure their compliance with the LOW**
- **Failure to comply with instructions to permit a search may result in the loss of protected status for the transport, rendering it subject to attack**

MEDICAL PERSONNEL, MEDICAL UNITS AND ESTABLISHMENTS; CHAPLAINS

- **To facilitate visual identification of medical and religious personnel, and medical units and transports, four distinctive emblems have been established and recognized.**
- **As displayed front left to right, they are 1) a red cross; 2) a red crescent; 3) a red crystal, a n (subsequ**

WOUNDED AND SICK IN FIELD AND SEA

- **1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GWS)**
- **1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GWS-Sea)**
- **Provide protection to military sick, wounded, and shipwrecked, to include military chaplains, military medical personnel, combatants and civilians authorized to accompany the armed forces in the field who are wounded, sick, or become shipwrecked**

WOUNDED AND SICK IN FIELD AND SEA

- **3 fundamental obligations:**
  - **Respect and protect wounded, sick, and shipwrecked military personnel**
  - **Recover, account for, and dispose of friendly and enemy dead with regard to, and in a manner that facilitates, the post-conflict return of their remains to their next-of-kin**
  - **Respect enemy military medical personnel, facilities, units, and transports in the performance of their duties**
- **Hors de combat or “out of the battle”**

WOUNDED AND SICK IN FIELD AND SEA

- **Military personnel who are *hors de combat***
  - **Their attack or intentional injury is strictly prohibited**
  - **Booby trapping of wounded or sick persons is also expressly prohibited**
  - **An attack on an individual with the knowledge that he or she is *hors de combat,* if it causes death or serious injury to that person, is a Grave Breach of the LOW**

WOUNDED AND SICK IN FIELD AND SEA

- **Recovery, Collection, and Care**
  - **Parties to a conflict are obligated to take all possible measures to search for and collect military wounded, sick, and shipwrecked, to protect them, and to ensure their care**
  - **Order of treatment for U.S., allied, coalition, or captured enemy personnel must be based upon medical priority only (i.e., triage)**
  - **Obligation to recover enemy dead is similar to recovery of enemy wounded, sick, and shipwrecked (reasonableness)**

CULTURAL PROPERTY

- **1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict**
- **Movable or immovable property of great importance to the cultural heritage of every people (e.g., buildings dedicated to religion, art, and historic monuments)**
- **Protected from intentional attack so long as it is not being used for military purposes or otherwise regarded as a military objective**
- **Duty to indicate presence with visible and distinctive signs; U.S. practice has**

WEAPONS AND MUNITIONS

WEAPONS AND MUNITIONS GENERALLY

- **LOW prohibits weapons calculated to cause *superfluous injury* or *unnecessary suffering* to enemy combatants; and those weapons that cause injuries manifestly disproportionate to the military advantage expected to be gained**
- **U.S. Policy: The acquisition and procurement of DoD weapons and weapons systems shall be consistent with all applicable domestic and international laws, treaties, and international agreements**
- **Weapons and weapon systems are presumed lawful (i.e., consistent with the LOW and arms control obligations) if they have received the requisite legal review**

CERTAIN CONVENTIONAL WEAPONS

- **1980 United Nation's Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW)**
- **Framework to restrict, regulate, or prohibit use of certain otherwise lawful conventional weapons**
- **United States has ratified the CCW and its 5 protocols**

CCW PROTOCOLS

- **Protocol I: Non-detectable fragments**
- **Protocol II: Mines, Booby-Traps and Other Devices**
  - **Amended Mines Protocol II (AMP II)**
- **Protocol III: Incendiary Weapons**
- **Protocol IV: Blinding Laser Weapons**
- **Protocol V: Explosive Remnant of War**

PROTOCOL I:
NON-DETECTABLE FRAGMENTS

- **Prohibits any weapon whose primary effect is to injure by fragments which, when in the human body, escape detection by x-ray**

PROTOCOL II AND AMPII: MINES

- **Lawful if properly used**
- **Remotely delivered mines must be “smart” (self-deactivating, neutralizing, or destructing)**
- **“Dumb” (persistent) anti-personnel and anti-vehicle mines will no longer be used by the U.S.**
- **All mines be detectable using available technology (i.e., normal mine sweeping equipment)**
- **M-18 Claymore**

PROTOCOL III: INCENDIARY WEAPONS

- **Regulates, but does not prohibit, the use of incendiary weapons against enemy combatants, materiel, and other military objectives**
- **Incendiaries are any weapons or munitions which are primarily designed to set fire to objects or to cause burn injury to persons produced by a chemical reaction of a substance delivered on a target**
- **Lawful weapons under the LOW; however they should not be used in way to cause unnecessary suffering**
- **They can take the form of flame throwers, napalm, rockets, grenades, mines, bombs, and other containers of incendiary substances**
- **U.S. Reservation**

PROTOCOL IV: BLINDING LASERS

- **Two types of Lasers:**
  - **Prohibited – those specifically designed to cause permanent blindness to unenhanced vision**
  - **No impact on those designed primarily to increase combat capabilities (e.g., range-finding, target designation, jamming, dazzling, communications, or weapons guidance); authorized despite the potential for serious eye damage or blindness**

PROTOCOL V:
EXPLOSIVE REMNANTS OF WAR (ERW)

- **State parties to an armed conflict, where feasible, are to clear or assist the host nation or others in clearance of unexploded ordnance or abandoned explosive ordnance after cessation of hostilities**

BIOLOGICAL WEAPONS CONVENTION

- **Convention on the Prohibition of Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 1972 (BWC)**
- **Biological Weapons Anti-Terrorism Act of 1989**
  - **Prohibits anti-materiel uses**
  - **Criminal penalties up to life in prison**
- **The United States has unconditionally renounced all uses and methods of biological and toxin warfare**

CHEMICAL WEAPONS CONVENTION

- **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993 (CWC)**
- **Bans Use of Chemical Weapons, defined as: "Toxic chemicals and their precursors, except where intended for purposes not prohibited under this convention, as long as the types and quantities are consistent with such purposes."**
- **Toxic Chemicals defined as: "Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals."**

CHEMICAL WEAPONS CONVENTION

- **Purposes not Prohibited**
  - **Military purposes not connected with use of CWs and not dependent on use of the use of the toxic properties of chemicals as a method of warfare (e.g., Mobility Denial System, incendiaries, jet fuel)**
  - **Law enforcement including domestic riot control purposes**

CHEMICAL WEAPONS CONVENTION

- **Riot Control Agents are not CW**
- **CWC prohibits RCA use as “method of warfare”**
- **RCA defined as:**
  - **“Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.”**

CHEMICAL WEAPONS CONVENTION

- **U.S. view**
  - **No first use in armed conflict**
  - **Can use defensively to save lives, for example:**
    - **Rioting POWs**
    - **Human Shields**
    - **CSAR Missions**
    - **Rear Area Security**
  - **Permitted in MOOTW (CT, PKO)**
  - **Executive Order 11850 governs RCA use in war**
  - **Employment guidance addressed in CJCSI 3110.07D (SECRET)**

U.S. WEAPONS

- **All weapons, weapon systems, and ammunition procured by the U.S. military are reviewed for legality under both domestic and international law**
- **If a weapon, weapon system, or ammunition has been issued, then it is presumed lawful**
- **ROE will address any restrictions on use**

SMALL ARMS PROJECTILES

- **Full-Metal Jacketed Ammunition (e.g., 5.56x45mm, tracers, armor-piercing) is lawful**
- **Sniper Rifles, .50 caliber machine gun, and shotguns are lawful, but ROE may limit use**
- **U.S. practice is not to use hollow point or soft-point (expanding ammunition)**

MULTIPLE-FRAGMENTING MUNITIONS

- **Munitions that project a large number of projectiles on detonation (e.g., Claymores, Grenades, and Cluster Bombs)**
- **Their purpose is to increase the probability of wounding a number of enemy combatants within range of its fragments; it is not to aggravate the wounds of combatants**
- **Multiple-fragmenting munitions are lawful weapons under the law of war**

NON-LETHAL WEAPONS

- **DoDD 3000.03, April 25, 2013**
  - **NLW: Weapons, devices, and munitions that are explicitly designed and primarily employed to incapacitate targeted personnel or materiel immediately, while minimizing fatalities, permanent injury to personnel, and undesired damage to property in the target area or environment**
  - **NLW are intended to have reversible effects on personnel and materiel**

RULES OF ENGAGEMENT

RULES OF ENGAGEMENT (ROE)

- **Standing Rules of Engagement (SROE)/Standing Rules for the Used of Force (SRUF) for U.S. Forces, CJCSI 3121.01B**
- ***"Directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered."* (JP 1-02)**

SROE/SRUF APPLICABILITY

- **SROE apply to DoD personnel performing:**
  - **Military operations and contingencies and routine Military Department functions occurring outside U.S. territories**
  - **Air and maritime homeland defense missions within U.S. territories**
- **SRUF apply to DoD personnel performing:**
  - **Civil support missions and land-based homeland defense missions within U.S. territory**
  - **Law enforcement functions and security duties on all DoD installations**
  - **Official DoD security functions off-installations**

SROE PERMISSIVE IN NATURE

- **Unless a specific weapon or tactic requires SecDef or combatant commander approval, or unless a specific weapon or tactic is restricted by an approved supplemental measure, commanders may use any lawful weapon or tactic available for mission accomplishment (para. 6.b.(3), CJCSI 3121.01B)**
- **Unlike the SROE, specific weapons and tactics not approved within the SRUF require SecDef approval (para. 6.c.(3), CJCSI 3121.01B)**

RULES OF ENGAGEMENT

- **When to use force :**
  - **Mission Accomplishment**
    - **Declared Hostile Force**
    - **Lawful military objectives**
  - **Self Defense**
    - **Hostile Act**
    - **Hostile Intent**
- **Requirement of Distinction**
- **Positive Identification - reasonable certainty that the proposed target is a legitimate military objective**

RULES OF ENGAGEMENT: KEY CONCEPTS

- **Declared Hostile Forces – any civilian, paramilitary or military force or terrorist(s) that has been declared hostile by appropriate U.S. authority**

- **Declared Hostile Forces may be engaged without them committing a Hostile Act or demonstrating Hostile intent**

RULES OF ENGAGEMENT: KEY CONCEPTS

- **Hostile Act (HA) – an attack or other use of force against the United States, U.S. forces or other designated persons or property. It also includes force used directly to preclude or impede the mission and/or duties of U.S. forces, including recovery U.S. personnel or vital USG property.**

- **Hostile Intent (HI) – threat of imminent use of force against the United States, U.S. forces or other designated persons or property. It also includes the threat of force to preclude or impede the mission and/or duties of U.S.**

RULES OF ENGAGEMENT

- **Right of Self-Defense**
  - **Marines may exercise individual self-defense subject to the Commander's guidance**
  - **Unit commanders always retain the inherent right and obligation to exercise unit self-defense**
- **Principles of Self-Defense**
  - **Necessity: Existence of HA or HI**
  - **Proportionality: Decisively Respond to HA/HI, but not exceed nature, duration, or scope of force required**
  - **Distinction/Discrimination: PID**

RULES OF ENGAGEMENT

- **National Self-Defense**
  - **Defense of the United States, U.S. forces, and, in certain circumstances, U.S. persons and their property, and/or U.S. commercial assets from a HA or demonstration of HI**

- **Collective Self-Defense**
  - **Defense of designated non-U.S. military forces and/or designated foreign nationals and their property–from a HA or demonstrated HI. Only the POTUS or SECDEF may authorize collective self-defense**

RULES OF ENGAGEMENT

- **Supplemental Measures to the SROE**
  - **Enable a commander to obtain or grant those additional authorities necessary to accomplish an assigned mission**
  - **Commanders at any level may request SM if the existing ROE are unclear, too restrictive, or otherwise unsuitable for the particular mission**
  - **Supplemental measure do not limit Commander's inherent right and obligation of unit self-defense**
  - **Commanders issuing SM more restrictive than SecDef approved ROE must notify SecDef through chain of command**

RULES OF ENGAGEMENT

- **Theater-Specific ROE**
  - **Combatant Commanders augment the SROE by implementing supplemental measures or by submitting supplemental measures for approval**
  - **Theater-Specific ROE may be used to reflect changing political and military policies, threats, and missions specific to the respective areas of operation**
- **Multinational ROE**
  - **May apply to U.S. forces conducting operations or exercises in a multinational environment if authorized by SecDef**
  - **Apply to mission accomplishment; U.S. forces retain inherent right and obligation of self-defense**

RULES FOR THE USE OF FORCE IN DOMESTIC MILITARY OPERATIONS

RULES FOR THE USE OF FORCE

- **Primary responsibility for protecting life and property and maintaining law in order in civilian community is vested in State and Local governments**
- **Military personnel participation in civilian law enforcement activities prohibited unless specifically authorized by law**
- **Posse Comitatus Act / 10 U.S.C. §375**
- **DODI 3025.21, Defense Support of Civilian Law Enforcement Agencies**
  - **Permissible Direct Assistance**
  - **Restrictions on Direct Assistance**

RULES FOR THE USE OF FORCE

- **References**
  - **SRUF, contained within the SROE, CJCSI 3121.01B**
  - **DoDD 3025.18, Defense Support to Civil Authorities**
  - **DoDD 5210.56, Carrying of Firearms by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities**
  - **DoDI 3025.21, Defense Support of Civilian Law Enforcement Agencies**
  - **SECNAVINST 5500.29C, Use of Deadly Force and the Carrying of Firearms by Personnel of the Department of the Navy in conjunction with Law Enforcement, Security Duties and Personal Protection**
  - **MCO 5500.6H, Arming of Law Enforcement and Security Personnel and the Use of Force**

RULES FOR THE USE OF FORCE

- **Rules of Engagement**
  - **Basis in LOW, CIL, UN Charter**
- **Rules for the Use of Force**
  - **Basis in U.S. domestic law, 4th Amendment to U.S. Constitution, Case Law**
  - **Actions evaluated based upon an objective/reasonableness standard**

RULES FOR THE USE OF FORCE

- **Unit commanders still retain inherent right and obligation of unit self-defense, but may limit an individual service member's right of self-defense**
- **Normally, force is to be used only as a last resort, and the force used should be the minimum necessary**
- **Deadly force is to be used only when all lesser means have failed or cannot be reasonably employed**
- **Force employed must be reasonable in intensity, duration and magnitude based on totality of circumstances to counter the threat**

RULES FOR THE USE OF FORCE

- **Deadly Force**
  - **When time and circumstances permit, threatening forces should be warned and given opportunity to withdraw or cease threatening action; warning shots not permitted within U.S. territory**
  - **Authorized for self-defense when DoD unit commanders reasonably believe that a person poses an imminent threat of death or serious bodily harm to DoD forces. Unit self-defense includes the defense of other DoD forces in the vicinity**
  - **Also authorized for defense of non-DoD persons in the vicinity, when directly related to the assigned mission); protection of Assets Vital to National Security, Inherently Dangerous Property, and National Critical Infrastructure**
  - **Authorized to prevent serious offenses against persons; escape of prisoner; and arrest/apprehend person believe to have committed serious offense**

QUESTIONS

BACK-UP SLIDES

INTERNATIONAL HUMAN RIGHTS LAW (IHRL)

IHRL

- **Treaty and Customary International Law (CIL) that focuses on the life and dignity of human beings; protects person as individuals rather than subjects of sovereign States**
- **Treaty: binds a State in relation to persons within its territory and subject to its jurisdiction**

IHRL

- **IHRL vs. LOW**
  - **Traditional (U.S.) view: two separate systems of protections**
    - **IHRL: regulates relationship between State and individuals within their territory and under their jurisdiction to protect individuals from harmful acts of their own governments**
    - **LOW: regulate wartime relations between belligerents and protected person such as civilians, usually not a State's own citizens or nationals**

IHRL TREATIES

- **U.S. Ratified IHRL Treaties**
  - **Convention on the Prevention and Punishment of the Crime of Genocide**
  - **Convention on the Elimination of All Forms of Racial Discrimination**
  - **International Covenant on Civil and Political Rights**
  - **Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment**
- **U.S. Policy**
  - **Reservations**
  - **Understanding**
  - **Declarations**

IHRL SYSTEMS

- **International Human Rights Systems**
  - **Universal Declaration of Human Rights**
  - **UN Human Rights Committee**
  - **UN Human Rights Council**
  - **European Human Rights System**

INFORMATION OPERATIONS

INFORMATION OPERATIONS

"The integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to influence, disrupt, corrupt, or usurp the decision-making of adversaries and potential adversaries while protecting our own."

(JP 3-13, Information Operations, 27 Nov 2012)

INFORMATION OPERATIONS

- **5 Core Capabilities**
  - **Military Information Support Operations (MISO)**
  - **Military Deception (MILDEC)**
  - **Operations Security (OPSEC)**
  - **Electronic Warfare (EW)**
  - **Computer Network Operations (CNO)**

MISO

"Planned operations to convey selected information and indicators to foreign audiences to influence their emotions, motives, objective reasoning, and ultimately the behavior of foreign governments, organizations, groups, and individuals in a manner favorable to the originator's objectives."

(JP 3-13.2, Military Information Support Operations (Incorporating Change 1 Dated 20 Dec 2011), 07 Jan 2010)

MILDEC

"Actions executed to deliberately mislead adversary military, paramilitary, or violent extremist organization decision makers, thereby causing the adversary to take specific actions (or inactions) that will contribute to the accomplishment of the friendly mission."

(JP 3-13.4, Military Deception, 26 Jan 2012)

OPSEC

- **A process of identifying critical information and subsequently analyzing friendly actions attendant to military operations and other activities to:**
  - **understand what friendly information is necessary for the adversary to have sufficiently accurate knowledge of friendly forces and intentions;**
  - **deny adversary decision makers critical information about friendly forces and intentions; and**
  - **cause adversary decision makers to misjudge the relevance of known critical friendly information because other information about friendly forces and intentions remain secure**

EW

- **Military action involving the use of electromagnetic and directed energy to control the electromagnetic spectrum or to attack the enemy**
- **Three subdivisions of EW:**
  - **Electronic Attack (Offensive)**
  - **Electronic Protection (Defensive)**
  - **Electronic Warfare Support (Intelligence)**

CNO

- **Used to attack, deceive, degrade, disrupt, deny, exploit, and defend electronic information and infrastructure**
- **Three subdivisions of CNO:**
  - **Computer Network Attack**
  - **Computer Network Defense**
  - **Computer Network Exploitation**